

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

LAUREL PARK COMMUNITY, LLC, a Washington limited liability company; TUMWATER ESTATES INVESTORS, a California limited partnership; VELKOMMEN MÖBILE PARK, LLC, a Washington limited liability company; and MANUFACTURED HOUSING COMMUNITIES OF WASHINGTON, a Washington non-profit corporation,

Petitioners,

VS.

CITY OF TUMWATER, a municipal corporation,

Defendant.

NO. Co9-5312 BHS

**ANSWER OF DEFENDANT CITY
OF TUMWATER**

In answer to the allegations in Plaintiffs' Complaint for Damages filed on May 27, 2009, (hereinafter "Complaint") Defendant City of Tumwater (hereinafter "Tumwater") hereby alleges as follows:

I. ANSWER

A. PARTIES, JURISDICTION, AND VENUE

1 In response to Paragraph 1 of Plaintiffs' Complaint, Tumwater admits that
Laurel Park participated in proceedings before the Tumwater Planning Commission

**ANSWER OF DEFENDANT
CITY OF TUMWATER**

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1 and City Council, but lacks sufficient knowledge concerning the remaining allegations
2 in Paragraph 1 and therefore Tumwater denies the same.

3 2 In response to Paragraph 2 of Plaintiffs' Complaint, Tumwater admits
4 that Tumwater Estates participated in proceedings before the Tumwater Planning
5 Commission and City Council, but lacks sufficient knowledge concerning the remaining
6 allegations in Paragraph 2 and therefore Tumwater denies the same.

7 3. In response to Paragraph 3 of Plaintiffs' Complaint, Tumwater admits
8 that Velkommen Park participated in proceedings before the Tumwater Planning
9 Commission and City Council, but lacks sufficient knowledge concerning the remaining
10 allegations in Paragraph 3 and therefore Tumwater denies the same.

11 4. In response to Paragraph 4 of Plaintiffs' Complaint, Tumwater admits
12 that Manufactured Housing Communities of Washington ("MHCW") participated in
13 proceedings before the Tumwater Planning Commission and City Council, but lacks
14 sufficient knowledge concerning the remaining allegations in Paragraph 4 and therefore
15 Tumwater denies the same.

16 5. In response to Paragraph 5 of Plaintiffs' Complaint, Tumwater admits the
17 same.

18 6. In response to Paragraph 6 of Plaintiffs' Complaint, Tumwater admits the
19 same, except to the extent the defenses pleaded herein are inconsistent.

20 7. In response to Paragraph 7 of Plaintiffs' Complaint, Tumwater admits the
21 same, except to the allegation that Plaintiffs have been injured or Tumwater caused
22 such injury.

23 **B. BACKGROUND FACTS**

24 8. In response to paragraph 8 of Plaintiffs' Complaint, Tumwater admits
25 that it is required to adopt a comprehensive plan under the Growth Management Act.
26 Tumwater admits only that the remaining portions of Paragraph 8 accurately quote a
portion of RCW 36.70A.020, which is not set forth in its entirety.

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1 9. In response to paragraph 9 of Plaintiffs' Complaint, Tumwater admits the
2 same.

3 10. In response to paragraph 10 of Plaintiffs' Complaint, Tumwater admits
4 only that a proposal to create a manufactured home park district was referred to the
5 Planning Commission. Tumwater denies the remaining allegations in Paragraph 10 of
6 the Complaint.

7 11. In response to paragraph 11 of Plaintiffs' Complaint, Tumwater admits
8 only that the Planning Commission and General Government Committee considered a
9 memorandum dated January 24, 2008 as part of its consideration of the proposal to
10 create a manufactured home park district. Tumwater denies the remaining allegations
11 in Paragraph 11 of the Complaint.

12 12. In response to paragraph 12 of Plaintiff's Complaint, Tumwater admits
13 only that the planning commission considered a proposed ordinance to amend the
14 Comprehensive Plan to provide for a manufactured home park district in the City. The
15 City further admits that it ultimately adopted Ordinance No. O2008-027, which applies
16 to six properties in the City of Tumwater. Tumwater denies the remaining allegations
17 of Paragraph 12.

18 13. In response to paragraph 13 of Plaintiff's Complaint, Tumwater admits
19 that the provisions of Ordinance 02008-27 apply to Laurel Park, Tumwater Estates and
20 Velkommen Park, and include them within the manufactured home park district.
21 Tumwater denies the remaining allegations of Paragraph 13.

22 14. In response to paragraph 14 of Plaintiffs' Complaint, Tumwater admits
23 the same.

24 15. In response to paragraph 15 of Plaintiffs' Complaint, Tumwater admits
25 the same, except that the date of the Planning Commission hearing was November 25,
26 2008.

1 16. In response to paragraph 16 of Plaintiffs' Complaint, Tumwater admits
2 the same.

3 17. In response to paragraph 17 of Plaintiffs' Complaint, Tumwater admits the
4 same.

5 18. In response to paragraph 18 of Plaintiffs' Complaint, Tumwater denies the
6 same.

7 19. In response to paragraph 19 of Plaintiffs' Complaint, Tumwater admits
8 that the Plaintiffs opposed adoption of Ordinance 02008-027, but denies all remaining
9 allegations in paragraph 19 of the Complaint.

10 20. In response to paragraph 20 of Plaintiffs' Complaint, Tumwater admits
11 the same.

12 21. In response to paragraph 21 of Plaintiffs' Complaint, Tumwater avers that
13 Ordinance 02008-027 speaks for itself and is not completely set forth therein.

14 22. In response to paragraph 22 of Plaintiffs' Complaint , Tumwater denies
15 the same.

16 23. In response to paragraph 23 of Plaintiffs' Complaint, Tumwater avers that
17 Ordinance 02008-009 speaks for itself and is not completely set forth therein. To the
18 extent that Paragraph 23 makes factual allegations, Tumwater denies the same.

19 24. In response to paragraph 24 of Plaintiffs' Complaint, Tumwater avers that
20 Ordinance 02008-009 speaks for itself and is not completely set forth therein. To the
21 extent that Paragraph 24 makes factual allegations, Tumwater denies the same.

22 25. In response to paragraph 25 of Plaintiffs' Complaint, Tumwater avers that
23 Ordinance 02008-009 speaks for itself and is not completely set forth therein. To the
24 extent that Paragraph 25 makes factual allegations, Tumwater denies the same, except
25 to the extent Plaintiffs admit they have economically viable and reasonable use of their
26 properties.

26. In response to paragraph 26 of Plaintiffs' Complaint, Tumwater admits the same.

C. CLAIMS FOR RELIEF

First Cause of Action – Due Process Violation

27. In response to paragraph 27 of Plaintiffs' Complaint, Tumwater incorporates its responses to paragraphs 1-26 above and incorporate the same as though fully set forth herein.

28. In response to paragraph 28 of Plaintiffs' Complaint, Tumwater avers that the Due Process Clause of the Fourteenth Amendment to the United States Constitution speaks for itself and admits only that portions thereof are correctly quoted by paragraph 28 of the Complaint.

29. In response to paragraph 29 of Plaintiffs' Complaint, Tumwater denies the same.

30. In response to paragraph 30 of Plaintiffs' Complaint, Tumwater lacks sufficient knowledge to determine the truth of the allegations therein and therefore denies the same.

31. In response to paragraph 31 of Plaintiffs' Complaint, Tumwater denies the same.

Second Cause of Action – Equal Protection

32. In response to paragraph 32 of Plaintiffs' Complaint, Tumwater incorporates its responses to paragraphs 1-31 above and incorporate the same as though fully set forth herein.

33. In response to paragraph 33 of Plaintiffs' Complaint, Tumwater avers that the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution speaks for itself and denies that it is accurately quoted by paragraph 33 of the Complaint. Paragraph 33 sets forth legal conclusions to which no response is required.

34. In response to paragraph 34 of Plaintiffs' Complaint, Tumwater denies the same.

35. In response to paragraph 35 of Plaintiffs' Complaint, Tumwater denies the same.

36. In response to paragraph 36 of Plaintiffs' Complaint, Tumwater denies the same.

Third Cause of Action – Regulatory Taking

37. In response to paragraph 37 of Plaintiffs' Complaint, Tumwater incorporates its responses to paragraphs 1-36 above and incorporate the same as though fully set forth herein.

38. In response to paragraph 38 of Plaintiffs' Complaint, Tumwater avers that the Takings Clause of the Fifth Amendment to the United States Constitution speaks for itself and admits only that portions thereof are correctly quoted by paragraph 38 of the Complaint.

39. In response to paragraph 39 of Plaintiffs' Complaint, Tumwater denies the same.

40. In response to paragraph 40 of Plaintiffs' Complaint, Tumwater denies the same.

Fourth Cause of Action – Civil Rights Violation

41. In response to paragraph 41 of Plaintiffs' Complaint, Tumwater incorporates its responses to paragraphs 1-40 above and incorporate the same as though fully set forth herein.

42. In response to paragraph 42 of Plaintiffs' Complaint, Tumwater denies that Plaintiffs are entitled to any damages pursuant to the United States Constitution or 42 U.S.C. §1983 as a result of the City's enactment of the Mobile Home Park District.

43. In response to paragraph 43 of Plaintiffs' Complaint, Tumwater denies the same.

1 Fifth Cause of Action – State Inverse Condemnation /Eminent Domain

2 44. In response to paragraph 44 of Plaintiffs' Complaint, Tumwater
3 incorporates its responses to paragraphs 1-43 above and incorporate the same as
4 though fully set forth herein.

5 45. In response to paragraph 45 of Plaintiffs' Complaint, Tumwater avers that
6 Article I, Section 16 of the Washington Constitution and RCW 36.70A.020(6) speak for
7 themselves and admit only that portions thereof are correctly quoted by paragraph 45
8 of the Complaint.

9 46. In response to paragraph 46 of Plaintiffs' Complaint, Tumwater denies
10 the same.

11 47. In response to paragraph 47 of Plaintiffs' Complaint, Tumwater denies the
12 same.

13 48. In response to paragraph 48 of Plaintiffs' Complaint, Tumwater denies
14 the same.

15 Sixth Cause of Action – State Due Process

16 49. In response to paragraph 49 of Plaintiffs' Complaint, Tumwater
17 incorporates its responses to paragraphs 1-48 above and incorporate the same as
18 though fully set forth herein.

19 50. In response to paragraph 50 of Plaintiffs' Complaint, Tumwater avers that
20 Article I, Section 3 of the Washington Constitution speaks for itself and admits only
21 that portions thereof are correctly quoted by paragraph 50 of the Complaint.

22 51. In response to paragraph 51 of Plaintiffs' Complaint, Tumwater denies the
23 same.

24 52. In response to paragraph 52 of Plaintiffs' Complaint, Tumwater denies the
25 same.

26 53. In response to paragraph 53 of Plaintiffs' Complaint, Tumwater denies the
same.

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54. In response to paragraph 54 of Plaintiffs' Complaint, Tumwater denies the same.

Seventh Cause of Action – State Equal Protection Violation

55. In response to paragraph 55 of Plaintiffs' Complaint, Tumwater incorporates its responses to paragraphs 1-54 above and incorporate the same as though fully set forth herein.

56. In response to paragraph 56 of Plaintiffs' Complaint, Tumwater avers that Article I, Section 12 of the Washington Constitution speaks for itself and admits only that portions thereof are correctly quoted by paragraph 50 of the Complaint.

57. In response to paragraph 57 of Plaintiffs' Complaint, Tumwater denies the same.

58. In response to paragraph 58 of Plaintiffs' Complaint, Tumwater denies the same.

59. In response to paragraph 59 of Plaintiffs' Complaint, Tumwater denies the same.

II AFFIRMATIVE DEFENSES

1. Plaintiffs' Complaint fails to state a claim upon which relief can be granted.

3 Plaintiffs lack standing

3 Plaintiffs' claims are not ripe

4. Plaintiffs' claims are barred by Plaintiffs' failure to exhaust administrative remedies

5. Plaintiffs' claims are not timely raised and are barred by the applicable statute of limitations.

6. Plaintiffs' claims are barred by plaintiffs' failure to file a notice of claim for damages.

7. Defendant City of Tumwater reserves the right to amend this Answer to add additional affirmative defenses that are revealed by further investigation and discovery in this matter.

III. PRAYER FOR RELIEF

1. Tumwater requests that the Court deny all relief sought by plaintiff in the Complaint.

2. Tumwater requests that the Complaint be dismissed with prejudice.

3. Tumwater requests that the Court award attorney's fees and costs to

Tumwater.

4. Tumwater requests that the Court award such further relief that the Court may deem just and equitable.

DATED this 17th day of June, 2009.

LAW, LYMAN, DANIEL,
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/s/ Jeffrey S. Myers
